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8 **United States District Court**
9 **Central District of California**
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11 CLAUDETTE MARIE LESLIE et al.,

12 Plaintiffs,

13 v.

14 NEW CENTURY MORTGAGE
15 CORPORATION et al.,

16 Defendants.
17
18

Case № 2:22-cv-6007-ODW (JEMx)

**ORDER GRANTING FREDDIE
MAC’S MOTION TO DISMISS [16]**

19 **I. INTRODUCTION**

20 Plaintiffs Claudette Marie Leslie, Rodwell N. Leslie, and Lillette E. Leslie
21 initiated this wrongful foreclosure action in the Superior Court of California, County of
22 Los Angeles against Defendants New Century Mortgage Corporation, CitiMortgage,
23 Inc., Quality Loan Service Corporation, and others. They later added Federal Home
24 Loan Mortgage Company (“Freddie Mac”) as a Defendant, and Freddie Mac removed
25 the case pursuant to 12 U.S.C. § 1452(f) and 28 U.S.C. § 1442(a). Freddie Mac now
26 moves pursuant to Federal Rule of Civil Procedure (“Rule”) 12(b)(6) to dismiss the
27 claims the Leslies assert against it. (Mot. Dismiss (“Motion” or “Mot.”), ECF No. 14.)
28 After carefully considering the papers filed in connection with the Motion, the Court

1 deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78;
 2 C.D. Cal. L.R. 7-15. For the following reasons, the Court **GRANTS** Freddie Mac's
 3 Motion.

4 **II. FACTUAL BACKGROUND**

5 For purposes of this Rule 12(b)(6) motion, the Court accepts the Leslie's well-
 6 pleaded allegations as true. *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir.
 7 2001).

8 **A. Purchase, Refinancing, and Securitization**

9 Rodwell and Lillette Leslie first purchased the subject property, a single family
 10 residence on 47th Street in Los Angeles, California, in 2003. (Fourth Am. Compl.
 11 ("FAC") ¶¶ 1, 3, 11, ECF No. 14.) In 2006, they refinanced their home loan with
 12 Defendant New Century Mortgage Corporation in the amount of \$357,000 (the
 13 "Loan"). (*Id.* ¶ 12.) The Loan was secured by a deed of trust with New Century as the
 14 beneficiary and nonparty Financial Title as the original trustee (the "Deed of Trust").
 15 (*Id.*)

16 Shortly after funding the loan, New Century caused nonparty Citigroup Global
 17 Markets Realty Corp., PLC, to pool the loan with other similar mortgages. (*Id.* ¶ 14.)
 18 Citigroup Global Markets Realty then sold the pooled loans to Citigroup Mortgage Loan
 19 Trust, Inc., as part of the Citigroup Mortgage Loan Trust 2006-NC, Asset-Backed
 20 Pass-Through Certificates, Series 2006-NC (the "Loan Trust"). (*Id.*) The Leslie's allege
 21 that, after this transaction, nonparty U.S. Bank National Association was the owner of
 22 the Loan, the trustee of the Loan Trust, and the beneficiary of the Deed of Trust. (*Id.*
 23 ¶ 15.)

24 **B. Assignment to CitiMortgage, Notice of Default**

25 Several years later, on September 23, 2014, New Century, through Defendant
 26 CitiMortgage, Inc. acting as New Century's attorney-in-fact, assigned the Deed of Trust
 27 to CitiMortgage. (*Id.* ¶ 18.) The Leslie's allege that this assignment did not transfer any
 28

1 right, title, or interest in the property to CitiMortgage because the Loan and Deed of
2 Trust had already been sold and assigned to the Loan Trust in June 2006. (*Id.*)

3 On March 30, 2016, CitiMortgage caused to be recorded a substitution of trustee
4 substituting Quality Loan in place of Financial Title as trustee for the Deed of Trust.
5 (*Id.* ¶ 20.) The Leslies allege that this substitution was ineffective because
6 CitiMortgage had no authority to make it, based on the fact that the Loan and Deed of
7 Trust had already been sold and assigned to the Loan Trust in June 2006. (*Id.*)

8 Around this time, the Leslies were having financial difficulties, and in April
9 2015, CitiMortgage caused its trustee, Quality Loan, to record a Notice of Default and
10 Election to Sell the property. (*Id.* ¶¶ 19, 21.) As with the prior two transactions, the
11 Leslies allege that CitiMortgage—and, by extension, Quality Loan—had no authority
12 to issue or record these documents. (*Id.* ¶ 21.)

13 **C. Loan Modification Applications, Trustee Sale**

14 From 2016 to 2018, the Leslies submitted applications for a loan modification.
15 (*Id.* ¶ 22.) CitiMortgage repeatedly asked the Leslies to submit documents they had
16 already submitted, and the loan was not modified. (*Id.*) The Leslies allege that this was
17 due to bad faith on the part of CitiMortgage. (*Id.*)

18 On September 26, 2018, CitiMortgage cause Quality Loan to record a Notice of
19 Trustee Sale with a scheduled sale date of November 8, 2018. (*Id.* ¶ 25.) In October
20 2018, the Leslies submitted a new loan modification application, (*id.* ¶ 26), and on
21 November 2, 2018, CitiMortgage sent the Leslies written correspondence
22 acknowledging that it had received the Leslies' loan modification documents, (*id.* ¶ 27).
23 On November 5, 2018, CitiMortgage sent the Leslies additional correspondence
24 indicating that “[y]ou may be eligible for a modification of your loan. We will contact
25 you shortly to discuss the details of modifying your loan.” (*Id.* ¶ 28.)

26 On November 7, 2018, two CitiMortgage representatives each advised Rodwell
27 Leslie that the trustee sale set for November 8, 2018, had been taken off calendar. (*Id.*
28 ¶ 29.) Nevertheless, the trustee sale went forward on November 8, 2018, and the

1 property was sold to a third party. (*Id.* ¶ 30.) That third party proceeded to initiate
 2 unlawful detainer proceedings against the Leslies, and eventually, the Leslies were
 3 evicted from the property. (*Id.* ¶ 31.)

4 **D. Freddie Mac**

5 In addition to these allegations, the Leslies make the following allegations
 6 regarding Freddie Mac:

7 32. In or about December 2020, Defendant Citi[M]ortgage alleged for the
 8 first time that Freddie Mac was the actual owner of the Note and
 9 beneficiary of the Deed of Trust at the time of sale.

10 33. Defendant Citi[M]ortgage claims that Freddie Mac purchased the Note
 11 in March 2010. . . .

12 36. Defendant Citi[M]ortgage alleges that Defendant Freddie Mac
 13 purchased the loan from Defendant Citi[M]ortgage in March of 2010, and
 14 was the actual owner of the Note and beneficiary of the Deed of Trust at
 15 the time of sale, either making the Citi[M]ortgage Assignment void, or
 making the purported sale to Freddie Mac a fraud. . . .

16 54. . . . [B]y moving forward with the trustee sale, Defendant
 17 Citi[M]ortgage was acting, on its own behalf or on behalf of Freddie Mac,
 18 with malice and deceit, and with conscious disregard of Plaintiffs rights.

19 55. At all times relevant herein, Defendant CitiMortgage was not
 20 authorized to act as Plaintiffs' lender and/or servicer, but having assumed
 21 that role on its own behalf or on behalf of Freddie Mac unbeknownst to
 22 Plaintiffs, Defendants had a duty to exercise reasonable care

23 (FAC ¶¶ 32, 33, 36, 54, 55.)

24 **III. PROCEDURAL BACKGROUND**

25 In their initial complaint, filed in state court on September 6, 2019, the Leslies
 26 asserted six causes of action. (Req. Judicial Notice ("RJN") Ex. U, ECF No. 18-21.)¹

27 ¹ The Court takes judicial notice of the docket and filings in the state court case. *Burbank–Glendale–*
 28 *Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998) (taking judicial notice
 of related court filings).

1 CitiMortgage demurred, and the court sustained the demurrer. (RJN Ex. V, ECF
 2 No. 18-22.) The Leslies filed a First Amended Complaint, to which CitiMortgage again
 3 successfully demurred. (RJN Exs. W, X, ECF Nos. 18-23, 18-24.) The Leslies then
 4 filed a Second Amended Complaint, to which CitiMortgage demurred yet again. (RJN
 5 Ex. Y, ECF No. 18-25.) In response, the Leslies voluntarily dismissed their causes of
 6 action related to title to the property. (*Id.*) The court sustained CitiMortgage's demurrer
 7 to the Second Amended Complaint and again provided leave to amend. (*Id.*) On
 8 January 11, 2021, the Leslies served their Third Amended Complaint, and CitiMortgage
 9 answered. (RJN Exs. AA, BB, ECF Nos. 18-27, 18-28.)

10 On April 29, 2022, the Leslies requested the state court's leave to further amend,
 11 to (1) add several new minor plaintiffs who resided at the property prior to eviction;
 12 (2) include new allegations about securitization of the loan and possession of the note;
 13 and (3) add Freddie Mac as a defendant. (RJNS Exs. CC-EE, ECF Nos. 18-29 to
 14 18-31.) The state court denied leave to amend except for the addition of Freddie Mac
 15 as a defendant. (RJN Ex. FF, ECF No. 18-32.) The Leslies' operative Fourth Amended
 16 Complaint sets forth four causes of action: (1) wrongful foreclosure; (2) violation of
 17 California Civil Code section 2923.6, (3) negligence, and (4) negligent
 18 misrepresentation. Freddie Mac is named as a Defendant in the first three of these. (*See*
 19 *Fourth Am. Compl.*)

20 On August 24, 2022, Freddie Mac removed the action to federal court. (*See*
 21 *Notice of Removal*, ECF No. 1.) Freddie Mac now moves to dismiss, and its Motion is
 22 fully briefed. (*Opp'n Mot. Dismiss* ("Opp'n"), ECF No. 27; *Reply ISO Mot.* ("Reply"),
 23 ECF No. 30.)

24 IV. LEGAL STANDARD

25 A court may dismiss a complaint under Rule 12(b)(6) for lack of a cognizable
 26 legal theory or insufficient facts pleaded to support an otherwise cognizable legal
 27 theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). A
 28 complaint need only satisfy the minimal notice pleading requirements of Rule 8(a)(2)—

1 a short and plain statement of the claim—to survive a dismissal motion. *Porter v. Jones*,
2 319 F.3d 483, 494 (9th Cir. 2003). The factual “allegations must be enough to raise a
3 right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
4 555 (2007); *see Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (holding that a claim must
5 be “plausible on its face” to avoid dismissal).

6 The determination of whether a complaint satisfies the plausibility standard is a
7 “context-specific task that requires the reviewing court to draw on its judicial
8 experience and common sense.” *Iqbal*, 556 U.S. at 679. A court is generally limited to
9 the pleadings and must construe all “factual allegations set forth in the complaint . . . as
10 true and . . . in the light most favorable” to the plaintiff. *Lee*, 250 F.3d at 679. However,
11 a court need not blindly accept conclusory allegations, unwarranted deductions of fact,
12 and unreasonable inferences. *Spewell v. Golden State Warriors*, 266 F.3d 979, 988
13 (9th Cir. 2001). Ultimately, the factual allegations must be sufficient “to give fair notice
14 and to enable the opposing party to defend itself effectively,” and the “allegations that
15 are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair
16 to require the opposing party to be subjected to the expense of discovery and continued
17 litigation.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

18 Where a district court grants a motion to dismiss, it should generally provide
19 leave to amend unless it is clear the complaint could not be saved by any amendment.
20 *See Fed. R. Civ. P. 15(a)*; *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025,
21 1031 (9th Cir. 2008). Leave to amend “is properly denied . . . if amendment would be
22 futile.” *Carrico v. City & County of San Francisco*, 656 F.3d 1002, 1008 (9th Cir.
23 2011); *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir.
24 1986) (“Leave to amend should be granted unless the court determines that the
25 allegation of other facts consistent with the challenged pleading could not possibly cure
26 the deficiency.”).

V. DISCUSSION

Preliminarily, the Court notes that, in the Introduction section of their opposition brief, the Leslies plainly admit that the Factual Background section of their brief “include[s] facts that are set forth in the Fourth Amended Complaint or were subsequently revealed during discovery.” (Opp’n 3.) The Factual Background section reflects this blended approach; it includes long passages of factual matter that are either bereft of citations altogether or that include a short citation to the Fourth Amended Complaint at the end of a paragraph. (*See* Opp’n 4–10.) Save for the bulleted list on pages six through eight of the opposition brief, the Factual Background generally lacks citation to any of the materials revealed during discovery referenced by the Leslies in their Introduction.

The Leslies’ briefing practice is impermissible. Their choice to intermingle the allegations of the Fourth Amended Complaint with additional facts not alleged, and to do so without the support of clear and thorough citations, makes it impossible for the Court to determine which factual assertions and corresponding legal arguments are based on the allegations in the Fourth Amended Complaint and which are not. This, in turn, makes it impossible for the Court to properly consider the Leslies’ claims under the Rule 12(b)(6) standard. *See Lee*, 250 F.3d at 688–89 (emphasizing that, in ruling on Rule 12(b)(6) motions, review is limited to the complaint and judicially noticeable materials); *see also Kramer v. MicroBilt Corp.*, No. 5:19-cv-01021-JGB (SPx), 2019 WL 8065849, at *1 n.1 (C.D. Cal. Sept. 12, 2019) (“[A] Rule 12(b)(6) motion tests Plaintiffs’ allegations as stated within the four corners of the Complaint—extrinsic evidence is therefore irrelevant at this stage and will not be considered by the Court.”). For this reason, the Court disregards the Leslies’ Factual Background section in determining whether the Leslies state a claim against Freddie Mac. That said, the Court can and does consider the information in the Factual Background section in determining whether to grant leave to amend—a point to which the Court returns later in this Order. *Cf. Jacobson v. Schwarzenegger*, 357 F. Supp. 2d 1198, 1204 (C.D. Cal. 2004) (“[T]he

1 court may consider allegations in the plaintiff's opposition in deciding whether to grant
2 leave to amend." (citing *Broam v. Bogan*, 320 F.3d 1023, 1026 n.2 (9th Cir. 2003)).

3 **E. Freddie Mac's Unspecified Role**

4 Although Freddie Mac sets forth several bases for dismissing the claims against
5 it, its Motion succeeds on just one: that "none of the Leslies' allegations identify any
6 wrongdoing by Freddie Mac." (Reply 1.) This is an accurate characterization of the
7 Fourth Amended Complaint. The Leslies' well-pleaded factual allegations tell a story
8 primarily involving the Leslies, New Century, Financial Title, CitiMortgage, and
9 Quality. The basic structure of that story is simple: New Century was the Loan's
10 original lender and beneficiary; due to the 2006 securitization of the Loan, New Century
11 never had the authority to later assign the Loan to CitiMortgage; and as a result,
12 CitiMortgage never had the authority to take any of the post-2006 actions it took,
13 including naming a new trustee, foreclosing on the Loan, and directing the trustee to
14 conduct a non-judicial foreclosure sale. Freddie Mac is not part of this story. And
15 rather than trying to integrate Freddie Mac into this story, the Leslies do no more than
16 allege *what CitiMortgage says about Freddie Mac*. Such allegations do not constitute
17 well-pleaded allegations against Freddie Mac. The Leslies do not actually allege that
18 Freddie Mac purchased the Loan, and the Court cannot proceed with assuming this
19 assertion to be true. To do so would be to issue an advisory opinion based on allegations
20 not actually made. *See, e.g., Pettit v. Fed. Nat. Mortg. Ass'n*, No. 2-11-cv-00149-JAD-
21 PAL, 2014 WL 584876, at *3 (D. Nev. Feb. 11, 2014) ("Plaintiff is essentially seeking
22 an advisory opinion on affirmative defenses that he might ultimately have in a future
23 action brought by the holder of his note. Yet 'federal courts have never been empowered
24 to issue advisory opinions.'" (quoting *Coal. for a Healthy Cal. v. F.C.C.*, 87 F.3d 383,
25 386 (9th Cir. 1996)).

26 When the Leslies' hearsay-type allegations against Freddie Mac are disregarded,
27 all that remains against Freddie Mac are two terse, conclusory, subsidiary allegations
28 that CitiMortgage acted "on its own or on behalf of Freddie Mac." (FAC ¶¶ 54, 55.)

1 These allegations are legal conclusions devoid of any case-specific allegations
2 supporting the conclusion that CitiMortgage was acting on behalf of Freddie Mac. The
3 allegations are therefore insufficient to implicate Freddie Mac in this matter in any
4 meaningful way.

5 As the Fourth Amended Complaint lacks any well-pleaded allegation regarding
6 Freddie Mac's role in this controversy, it is appropriate to dismiss all three claims
7 against Freddie Mac. First, it is appropriate to dismiss the wrongful foreclosure claim
8 against Freddie Mac. "Wrongful foreclosure is a California common law claim that
9 generally tracks the elements of an equitable cause of action to set aside a foreclosure
10 sale." *Santana v. BSI Fin. Servs., Inc.*, 495 F. Supp. 3d 926, 948 (S.D. Cal. 2020). The
11 first element of a wrongful foreclosure cause of action requires that "the trustee or
12 mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property
13 pursuant to a power of sale in a mortgage or deed of trust." *Sciarratta v. U.S. Bank*
14 *Nat'l Ass'n*, 247 Cal. App. 4th 552, 561–62, (2016) (quoting *Miles v. Deutsche Bank*
15 *Nat'l Tr. Co.*, 236 Cal. App. 4th 394, 408 (2015)). Here, quite simply, the Fourth
16 Amended Complaint lacks a well-pleaded allegation that Freddie Mac was, at the
17 relevant times, the Loan's trustee or mortgagee.

18 It is also appropriate to dismiss the California Civil Code section 2923.6 claim
19 against Freddie Mac. Pursuant to section 2923.6, "a mortgage servicer, mortgagee,
20 trustee, beneficiary, or authorized agent shall not record a notice of default or notice of
21 sale, or conduct a trustee's sale, while [a] complete first lien loan modification
22 application is pending." Cal. Civ. Code § 2923.6(c). Here, the Leslies do not set forth
23 any well-pleaded factual allegation supporting the conclusion that Freddie Mac was the
24 "mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent" for the Loan.
25 Accordingly, the Leslies do not sufficiently plead that Freddie Mac violated Civil Code
26 section 2923.6.

27 Finally, it is appropriate to dismiss the negligence claim. A claim for negligence
28 is fundamentally and essentially based on a duty the defendant owes to the plaintiff.

1 *See Eriksson v. Nunnink*, 191 Cal. App. 4th 826, 838 (2011) (“[A]n essential element
 2 of an action for negligence is the existence of a duty of care to the plaintiff.”). In many
 3 contexts, including the loan modification and wrongful foreclosure context, the duty the
 4 defendant owes to the plaintiff depends on the defendant’s role. *See, e.g., Sheen v. Wells*
 5 *Fargo Bank, N.A.*, 12 Cal. 5th 905, 948 (2022). Here, the Leslies altogether fail to plead
 6 Freddie Mac’s role with well-pleaded factual allegations, and accordingly, it is not
 7 possible to determine what duty, if any, Freddie Mac owed to the Leslies. The Leslies’
 8 negligence claim against Freddie Mac therefore fails on the duty element and is subject
 9 to dismissal.

10 **F. Leave to Amend**

11 The Court acknowledges the Leslies’ argument that CitiMortgage has provided
 12 conflicting or changing information with regard to the ownership of the Loan and its
 13 chain of title. (Opp’n 5–8.) However, alleging a *defendant’s* contradictory positions
 14 on a matter is not the same thing as stating *one’s own* valid legal claim (against that
 15 defendant or any other). To state a claim, the Leslies must state their own theory of the
 16 case. In the wrongful foreclosure context, this may very well involve alleging various
 17 competing conveyances and recorded documents that lead to complicated, branching
 18 chains of title. Such allegations are permissible, and even common, but the plaintiff
 19 must actually make those allegations. Here, the Leslies presently do not; the Court
 20 provides the Leslies with leave to amend to do so. *Manzarek*, 519 F.3d at 1031.

21 In providing leave to amend, however, the Court is mindful that the Leslies have
 22 already had the benefit of several rounds of substantive rulings by the state court and
 23 leave to amend to cure deficiencies and test new legal theories. *See* § III, *ante*. On
 24 amendment, the Leslies may certainly add new facts related to Freddie Mac, including
 25 facts recently obtained through discovery. The Leslies may also modify their chain-of-
 26 title-related allegations to account for Freddie Mac, pursuant to the discussion above.
 27 But the Leslies may *not* add new facts unrelated to Freddie Mac or new facts that would
 28 generate completely new legal theories not already explored in the five prior pleadings.

1 In this same vein, this Court notes that it is highly unlikely to provide any more
 2 than this single, final round of leave to amend. The Leslie's should therefore avail
 3 themselves of this opportunity to allege *all* relevant facts and contentions supporting
 4 their theory of liability against Freddie Mac.²

5 VI. CONCLUSION

6 For the reasons discussed above, Freddie Mac's Motion to Dismiss is
 7 **GRANTED**. (ECF No. 43.) The Leslie's claims against Freddie Mac are **DISMISSED**
 8 **WITH LEAVE TO AMEND**. The Leslie's Fifth Amended Complaint, if any, is due
 9 no later than twenty-one (21) days from the date of this Order. If the Leslie's amend, all
 10 Defendants' answers or other responses are due no later than twenty-one (21) days from
 11 the date the Leslie's file their Fifth Amended Complaint. If the Leslie's do not amend,
 12 then the dismissal of the claims against Freddie Mac shall convert to a dismissal with
 13 prejudice, and Freddie Mac shall be dismissed from the action.

14
 15 **IT IS SO ORDERED.**

16
 17 November 18, 2022

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 20 **OTIS D. WRIGHT, II**
 21 **UNITED STATES DISTRICT JUDGE**

22
 23 ² A short comment about Freddie Mac's voluminous Request for Judicial Notice is warranted. As
 24 discussed above, the Court takes judicial notice of the docket and certain items from the state court
 25 case file. *See* n.1, *ante*. Freddie Mac requests further judicial notice, beginning with several docket
 26 items from certain bankruptcy court cases. The Court does not rely on any of the bankruptcy court
 27 materials in reaching its decision herein, and accordingly, these requests are **denied as moot**.
 28 Similarly, Freddie Mac requests judicial notice of recorded documents demonstrating the chain of title
 for the property. Some of these documents confirm conveyances the Leslie's allege in their Fourth
 Amended Complaint, and others do not. Regardless, the Court does not rely on any of these materials
 in determining that the Leslie's do not state a claim against Freddie Mac, and judicial notice is
 accordingly **denied as moot**. Finally, Exhibits B, D, and E are evidence beyond the pleadings and are
 not appropriate for judicial notice. Judicial notice is **denied** as to these Exhibits.